

MHTH010095612022



Mr. Jitendra Satish Awhad

Vs.

The State of Maharashtra  
(Through Mumbra Police Station, Dist.-Thane.)

**Order below Exh.1 in CBA No.4230/2022**

1] This is an application under Section 438 of Cr.P.C. filed by the applicant Mr. Jitendra Satish Awhad for seeking anticipatory bail to him.

2] The facts in brief for making this application are as follows -

On 14.11.2022 the informant gave a report to Mumbra police station, Thane that, on 13.11.2022 at about 18.30 hrs. at “Y” Junction, New Bridge, Mumbra, Tal. and Dist.-Thane, the applicant had used criminal force to her, with intention to outrage her modesty. On that report, the officer-in-charge of Mumbra police station has lodged an FIR bearing No.-I-1069/2022 for the offence punishable under section 354 of the Indian Penal Code against the applicant. The aforesaid offence is non-bailable, therefore, there is an apprehension in the mind of applicant that Mumbra police may arrest him in the said crime. Therefore, he approached this court for seeking pre-arrest bail.

3] The learned advocate Mr. G. B. Chavan for applicant submits that, the applicant is an innocent person and falsely implicated

in the said crime. He submits that, the applicant has not committed the crime alleged by the prosecution. He submits that, the applicant is a Member of a Legislative Assembly and leader of a political party. He submits that, the informant is also an office bearer of the rival political party. He submits that, due to political vendetta and to make a dent to the political career of the applicant, he is deliberately and falsely implicated in the aforesaid crime. He submits that, for the purpose of investigation of crime the custody of the applicant is not required to IO. He submits that, the applicant is a Member of a Legislative Assembly and Ex-Minister, having good reputation in the society. He submits that, the applicant is a law abiding citizen having deep roots in the society. He submits that, the applicant is permanently residing within the territorial jurisdiction of the court having no past criminal record. He submits that, if the applicant is arrested in the crime, then not only he deprived to his personal liberty but also his reputation in the society will be lowered. He further submits that the applicant is ready to abide by each and every conditions imposed by the court. He submits that, the applicant is ready to assist in the investigation of crime. He prayed for granting anticipatory bail to applicant.

4] The ld. Advocate for the applicant submits that, as per the prosecution case, the applicant has pushed the informant by touching her shoulder and thereby committed the offence p/u/s. 354 of IPC. He submits that, in order to make out a case under section 354 of IPC , it is not enough that the informant was pushed. Mere pushing the informant without having any intention to outrage the modesty does not constitute an offence p/u/s 354 of IPC.. He submits that, the applicant

was not having any intention to outrage the modesty of the informant. On that point the Ld. Advocate for the applicant has placed reliance on the judgment of the Hon'ble Bombay High Court, delivered in case of -Dilip Uttam Lomate Vs. State the of Maharashtra & anr., 2019 ALL MR (Cri.) 3206. Paragraph No.13 of the said judgment is relevant hence, I am reproducing the same as below.-

*“The factual score of the episode of allegation of indecent behaviour of the applicant- Headmaster, prima facie, reflects that there was no culpable intention of the part of applicant/accused while touching the hands of respondent No.2 Teacher to commit the offence of outraging her modesty. The alleged crime does not meet the criteria of Section 354 of IPC, as there are no circumstances, prima facie, sufficient to conceive that the act of touching the hands of respondent No.2 complainant had anything to do with the sex of the victim which is the essence of woman's modesty.”*

5] The Ld. Advocate for the applicant has also placed reliance on the judgment of the Hon'ble Bombay High Court delivered in the case of Hanumandas Pandurang Raut Vs. The State of Maharashtra and anr. 2012 ALL MR (Cri.) 1527. In the judgment cited supra, the Hon'ble High court held that,-

*“Merely touching the woman's body unintentionally would not amount to an offence punishable under section 354 of the Indian Penal Code. ”*

6] The IO and Ld. APP for the State have filed their say to the anticipatory bail application. The IO Ms. Sonali Dhole, ACP, Kalwa

Division, Thane and Ld. APP Mrs. V. R. Chandane for the State submits that, the offence punishable under section 354 of IPC is serious offence as it committed against a woman. They submit that, the investigation of crime is in progress and for the purpose of investigation custody of the applicant is required to IO. They submit that, the applicant was released on bail in crime No.-408/2022 registered with Vartakanagar police station, Thane. They submit that, by committing the aforesaid offence, the applicant has breached the conditions of the said bail order. They submit that, the applicant is an influential political leader and if anticipatory bail is granted to him then there is possibility that, by using the influence, he may pressurize or threaten the informant or other witnesses to dissuade them from disclosing the fact of the case to the IO or the court. They prayed for rejecting the anticipatory bail application.

7] Perused the application and say thereon. Considered the judgments cited supra. Heard ld. advocate for the applicant, ld. APP for the State and Investigating Officer. As per the FIR, on 13.11.2022 at about 04.00 pm at “Y” Junction, Mumbra, Thane, the Chief Minister of the State of Maharashtra had inaugurated the new bridge. The said function attended by the applicant, informant and so many persons. After the said function, being the sitting MLA of that area, the applicant has accompanied the Chief Minister up to his car. That time, the informant was also standing near the car of chief Minister. A crowd was also gathered there to see off the Chief Minister. When the convoy of the Chief Minister was about to leave, the applicant has moved forward to leave that place. While making the way out, the applicant has pushed the informant by touching his hands to her shoulder. The informant felt

that the applicant had inappropriately touched her with intention to molest her. Therefore, she gave the aforesaid report to police.

8] The said incident was shot by the media persons and video clips went viral on electronic social media. During hearing of the anticipatory bail application, the ld. Advocate for the applicant has shown those clips to me, Ld. APP and the IO. The IO and Ld. APP stated that, the case of the prosecution is based on the incident shown in those video clips. The video clips show that at the time of incident a crowd was gathered there and the applicant was leaving that place and while making way out, the applicant had pushed some persons including the informant.

9] The FIR is registered for the offence p/u/s.354 of IPC. The said section stated that, "*whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty commits an offence p/u/s. 354 of IPC.*" Thus, assault or use of criminal force and intention or knowledge are key ingredients of section 354 of IPC. As per the fact of the case, though the force was applied by the applicant to move aside the informant, however, that force cannot be termed as "criminal force" under section 350 of IPC. Similarly, the another key ingredient of section 354 of IPC is the intention to outrage the modesty or having knowledge that he will thereby outrage the modesty. The alleged incident was committed at public place wherein so many persons were gathered. It appears that, at the time of incident the applicant has pushed the informant only with intention to make a way to move

forward. It also comes to my knowledge that, at that time apart from pushing the informant, the applicant has pushed some other persons in order to make his way to move forward. Prima facie, it comes to my knowledge that, in that act, “the culpable intention” to outrage the modesty was missing.

10] It comes to my knowledge that, for the purpose of the investigation of crime the custody of the applicant is not required to IO. The applicant is ready to assist IO in the investigation of crime. The applicant is MLA, Leader of a political party and permanently residing within the territorial jurisdiction of the court. Thus, there is no probability the applicant may abscond and will not be available for the investigation of crime or at the time of trial. There is also less possibility that the applicant may tamper with the prosecution evidence. As per the report of IO, except the crime mentioned in that report the applicant does not have past criminal record. The crime mentioned in that report was registered recently. Thus, on the basis of aforesaid deliberation, I come to the conclusion that the applicant deserves for anticipatory bail with conditions. Hence, I proceed to pass following order.

### **ORDER**

- 1] The anticipatory bail application is hereby granted.
- 2] In the event of arrest in Crime No.-I-1069/2022 registered with Mumbra police station, Tal. and Dist.-Thane for the offence punishable under Section 354 of IPC, applicant Mr. Jitendra Satish Awdhad be released on bail on furnishing

P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand Only) with a surety in the like amount, on following conditions-

- a) He shall make himself available for the purpose of investigation of aforesaid crime and assist the investigating officer in the investigation of crime.
- b) He shall not tamper with the prosecution evidence nor hamper the investigation in any manner.
- c) He shall not make any inducement, threat or promise to any person acquainted with fact of the case to dissuade him/ her from disclosing such facts to the investigating officer or the court.

Date-15-11-2022.

(P. M. Gupta)  
Additional Sessions Judge, Thane.